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No. 602

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

LESLIE H. JAMOUNEAU,
Petitioner,

vs.

CLAIRE E. HARNER, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY.

PETITION FOR WRIT OF CERTIORARI.

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PETITION FOR WRIT OF CERTIORARI.

Opinions Below.

The opinion of the Supreme Court of New Jersey (No. A-18 September Term, 1954) is reported in 16 N. J. 500. It is reprinted as Appendix A, *infra*. The original opinion of The Essex County District Court is printed in the Appendix To Brief For Defendants-Respondents and Intervenor-Respondent (pp. 5a-10a) and the supplemental opinion of said court is printed in the Appendix To Brief For Appellant (pp. 26a-28a) both of which appendices were filed in the Superior Court of New Jersey, certified to the Supreme Court of New Jersey, and are filed in this cause under the provisions of paragraph 4 of Rule 21.

The opinion of the Supreme Court of New Jersey (Appendix A annexed hereto) was filed on November 22, 1954. The Mandate on Affirmance of said court (Appendix B annexed hereto) was entered and filed on the same date. There are also annexed hereto Petition For Certification

Under R. R. 1:10-1 (a) from Superior Court of New Jersey to Supreme Court of New Jersey (Appendix C) and order for certification by the Supreme Court of New Jersey pursuant thereto (Appendix D).

There has been no order respecting any rehearing.

Jurisdiction.

The jurisdiction of this Court is invoked under 28 U. S. C. A. Section 1257 (3).

Questions Presented for Review.

1. Are the plaintiff, a landlord, and the landlords of New Jersey generally, deprived of rights guaranteed by the federal constitution to due process of law and the equal protection of the laws, and of their immunities from the taking of property without due process of law and the impairment of the obligations of contracts by the judgment complained of, which affirms the validity of Sections 28 and 29 of the New Jersey Rent Control Act of 1953. *N. J. S.* 2A:42-41 and 42 (without which sections the act is inoperative and a nullity), submitting the act to the option of municipal governing bodies, which, however, have no governmental powers or functions under, or in relation to, the act; (1) because of the repugnancy of the judgment to the well settled law of New Jersey that the state constitution proscribes the submission of a state law to the option of municipal governing bodies except in the case of laws which vest appropriate governmental powers or functions in the municipal governments; (2) because of the repug-

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nancy of Sections 28 and 29, aforesaid, to the well settled law of New Jersey that "the legislature may impose its will as law upon municipalities, but if some other will is to intervene, it must be that of the people who are to be governed by such municipal law and not an alien will, even though it be that of the governing body for the time being of the municipality;" (3) because Sections 28 and 29, aforesaid, attempt to delegate to local authorities an absolute discretion to determine the propriety, expediency or necessity of a state law, in violation of the well settled law of the state that such discretion may not be delegated even to the people themselves, much less to their local governing bodies; and (4) because the subject of the law is inappropriate to municipal power and, under the well settled law of the state, such a law may not be submitted to local option?

2. Are the aforesaid rights of the plaintiff, and of landlords of New Jersey generally, to due process of law and the equal protection of the law, and their immunities from the taking of property without due process of law and the impairment of the obligations of contracts, violated or abridged by the New Jersey Rent Control Law of 1953, N. J. S. 2A:42-14, et seq., because (1), the act, while it purports to authorize the imposition of rent control only "in certain areas of this State" where "a serious public emergency exists" "due to continued shortage of rental housing space," contains no classification or standards for classification of said "certain areas" or "shortage of rental housing space," nor any requirement for a uniform application of the act within said "certain areas," wherefore the incidence of the act upon individual liberties, property rights and immunities, is wholly arbitrary and dis-

criminatory, both as between and within each of the said "certain areas;" because (2) no shortage of rental housing space exists in any area of the state which would have warranted the Legislature in declaring the existence of a serious public emergency; because (3) the act contains no valid legislative declaration of emergency within the requirements of the New Jersey Constitution; and because (4) the act in its operation is arbitrary and discriminatory, imposing controls on some dwelling units while capriciously exempting other units with identical characteristics in the same area of supposed shortage?

Constitutions and Statutes Involved.

The Constitutional and statutory provisions involved herein are set forth in Appendix E, *infra*.

Statement of the Case.

The New Jersey State Rent Control Law of 1953 was approved July 7, 1953 and became effective at midnight July 31, 1953, simultaneously with the termination of federal rent control in New Jersey under the United States Housing and Rent Act of 1947, as amended. Section 38 (*N. J. S.* 2A:42-51) of the New Jersey statute provides that it shall cease to be in effect on December 31, 1954. By Chap. 260, Laws of 1954, approved December 22, 1954, this section was amended to provide that the act shall cease to be in effect at midnight, June 30, 1956. Certain other amendments were made by the 1954 enactment, none of which are pertinent to the issues raised by the present petition.

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The New Jersey Rent Control Law operates, in only such municipalities as have moved to make the law operative therein, and not elsewhere, to freeze residential rents generally at the amounts at which they had been frozen under the precedent federal rent control law, adopting the federal rent registrations for the purposes of state rent control, and prohibiting evictions other than for non-payment of rent except as specially authorized by administrative orders. The act is administered by county agencies under the supervision of a state rent control director, who is vested with power to make regulations in implementation of the act. Violations of the act are punishable by a treble forfeiture by landlord to tenant, in Section 25 of the act, set forth in Appendix E annexed hereto. No powers or functions are vested in the municipality except such as are contained in Sections 28 and 29, set forth in said Appendix E, which empower the governing body of each municipality in the state to determine whether or not the law shall be operative therein, by the adoption of a resolution reciting that there is a housing shortage therein and that rent control is required therein for the protection, health and general welfare of the people of such municipality.

Pursuant with these sections, some 60 municipalities of New Jersey, including all the largest in point of population, with a total population of about 54 per cent of the whole population of the state, have elected to be subject to state rent control. The remainder, some 500 in number, including a population of about 46 per cent of the state's total, have elected not to be subject to state rent control.

The plaintiff is the owner of an apartment house property in the city of East Orange, New Jersey, which prop-

erty had been subject to federal rent control since March, 1942 until July 31, 1953, when it became subject to state rent control by the operation of the state law.

The plaintiff brought a civil action under the Uniform Declaratory Judgments Act, *N. J. S.* 2A:16-50, et seq., in the Essex County District Court, naming as defendants one of his tenants, Claire E. Harner, and the Essex County Rent Control Board, seeking a declaration of his rights, status and legal relations under the State Rent Control Law of 1953, and particularly a declaration that the lawful rent of the Harner apartment was the amount which had been established as the lawful rent therefor under the precedent federal rent control law, viz., $72.00 per month, notwithstanding that plaintiff, since March 1, 1952 had required payment of a monthly rent of only $65.00 until September 1, 1953, when, by agreement with tenant, the monthly rent was increased to $72.00. By leave of court, the complaint was amended to include a declaration that the state act constitutes an infringement of the State Constitution of 1947, and of rights guaranteeed to plaintiff by Section 1 of the Fourteenth Amendment to the Federal Constitution. (See record as printed for the use of court below, Appendix to Brief of Appellant, p. 13a, paragraph 16.)

The Attorney General of New Jersey intervened under authority of New Jersey Supreme Court Rule 4:37-2, and moved for dismissal, which motion was granted, the Essex County District Court holding itself to be without jurisdiction under New Jersey Supreme Court Rule 4:88-10, and that in any event it should not consider the constitutional question.

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The plaintiff appealed to the Appellate Division of the Superior Court, from which the cause was removed to the Supreme Court of New Jersey for decision by certification of the latter court on its own motion.

The judgment of the New Jersey Supreme Court overruled the trial court on the question of jurisdiction, holding that plaintiff was entitled to a declaratory judgment, but decided both the constitutional and statutory questions adversely to plaintiff, holding: "The contention of constitutional infirmity has not been sustained," and that plaintiff's lawful rent under the state law was limited to the amount actually paid and received as of July 31, 1953, i. e., $65.00, notwithstanding the court's finding on page 508 of its reported opinion that the lawful rent under federal law as of that date was $72.00, and that there "has been no change in the maximum rent thus prescribed, either by the federal authority during its incumbency or by the state authority since it assumed rent control . . . on August 1, 1953." The judgment dismissing the complaint, molded into a judgment for defendants on the merits in conformity with the court's opinion, was affirmed, and the cause remanded for proceedings accordingly.

Reasons for Granting the Writ.

The essence of the first question raised by plaintiff is whether he was denied due process of law and the equal protection of the laws by the repugnancy of the judgment to the well settled law of the state on the subject of the constitutionality of local option statutes.

All the law of New Jersey on this subject is derived from the opinions of the highest courts of the state in the

cases of *Paterson* v. *The Society, etc.*, 24 N. J. L. 385 (Sup. Ct. 1854); *Paul* v. *Gloucester County*, 50 N. J. L. 585 (E. & A. 1888), and *Attorney-General* v. *McGuinness*, 78 N. J. L. 346 (E. & A. 1910), the last mentioned being an exhaustive and comprehensive treatment of the whole subject.

The *Paterson* case lays down as indisputable three principles of constitutional law: *first*, that both by the fundamental theory of a representative democracy and by the express provisions of state constitutions, legislation cannot be exercised directly by the people; *second*, that the legislative power can be exercised only by the functionaries and in the mode designated and prescribed by the constitution; and *third*, that a law enacted by any other authority, or in any other mode than that prescribed by the constitution, is void (p. 395). The Court then held that these principles were not violated by a law which granted a city charter to a township, conditioned upon its acceptance or approval by the voters of the township, because "neither the propriety of the provisions themselves as proper municipal regulations nor the expediency of granting or tendering a charter containing these provisions" was submitted to the people, and the submission was to the voters not "as a part of the sovereign people but simply as corporators" of the projected municipal corporation, in which capacity their affirmative action is "an act of acceptance not of legislation." (p. 396).

The *Paul* case establishes that laws which vest *appropriate* local governing powers in municipalities may be subjected to acceptance by the voters of the municipality in a popular referendum, laying down the axiom that the validity of such laws "may be rested securely upon the right of the legislature to delegate the power of local gov-

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ernment to political subdivisions of the state." It is emphasized however that local option is limited to subjects which are within the municipal domain, the Court remarking, at page 601:

> "The limitation upon legislative power is in the subject itself, and not in the nature or character of the poltical subdivision of the state to which the grant is made. Can the right to declare what the law of attachment shall be, or how the action of ejectment shall be conducted, or what the law of descent shall be, be committed to a city any more than to a county? Hitherto the right to delegate has been restricted to such powers in the nature of police powers as are necessary to local government, among which the control of the liquor traffic is included. . . ."

The *McGuinness* opinion restates at length the doctrines of the *Paterson* and *Paul* cases, and reexamines all the other cases on the subject, all of which are found to be in harmony with the exception of one case, ***De Hart*** v. ***Atlantic City,*** 62 N. J. L. 586 (Sup. Ct. 1898), which the court thereupon overruled as repugnant to the fundamental principles of the *Paterson* case. The court pointed out that in only two other prior cases had the delegation of the local option power to municipal governing bodies been approved, viz., *Riley* v. *Trenton,* 51 N. J. L. 498 (Sup. Ct. 1889) and *Schwarz* v. *Dover,* 70 N. J. L. 502 (Sup. Ct. 1904), aff'd 72 N. J. L. 311 (E. & A. 1905); noting that in each case the power delegated was that of creating boards of excise by which the statutory powers were to be exercised, clearly a natural and appropriate function of local government. The court pointed out that these statutes were "*ex vi termini,* an accession to the law-making power of an entire class of

municipalities" and therefore came under the rule of *Paul* v. *Gloucester County, supra.* Thus the *McGuinness* case establishes the rule that laws which confer local governing powers upon all municipalities of a certain class are constitutional, regardless of whether the local option provisions of such laws are submitted to the local governing body, as in the *Riley* and *Schwarz* cases, or whether they are submitted directly to the people, as in the *Paul* case. The obvious analogy with the doctrine of the *Paterson* case is that the local governing body, like the people, has a dual personality. On the one hand, it is the legislative agent of the people, in which character it has the same incapacity to legislate as have the people in their sovereign character; on the other hand, it is the creature of the State, existing only at the pleasure of the Legislature, deriving its powers not from the people but solely from the Legislature. Consequently, in relation to laws which confer additional powers of self-government upon the municipality, the Legislature may properly provide that such laws shall be operative only upon their acceptance or adoption by the governing body, and in such event, the resolution or ordinance is not an exercise of the essential legislative function in any "law-making" sense offensive to the Constitution, but rather is merely an "act of acceptance."

But if the law confers no powers of self-government upon the municipality and is merely the submission of a state law to the option of the governing body, it falls within the proscription of the rule of the *Paterson* case, and is an unlawful delegation of legislative power to the people, or what is worse, to their legislative agent, their governing body. As the Court said, at page 382:

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> "For if the acceptance of a statute is not an act of legislation, and cannot be submitted as an act of lawmaking even to the people themselves, it follows *a fortiori* that it cannot be submitted to the lawmaking body of such people, i. e., their governing body."

The statute at bar in the *McGuinness* case was the Civil Service Law of 1908, which established a civil service system to operate under a State Commission with administrative and rule-making powers over local governments and their officials and employees, no powers or functions, however, being assigned to the local governments except the power of local option, by virtue of Section 30 of the act, which provided:

> "Any municipality of this State may adopt the provisions of this Act by an ordinance duly adopted by the governing body of such municipality or by the petition and vote of the qualified voters. . . ."

Obviously the constitutionality of the civil service law could not be supported by the rule as above stated, which validates local option laws vesting local governing powers in municipal governments, for no such powers existed in the law. Seeking elsewhere for a basis of constitutionality, the court, regarding the act as in the nature of a supplement to a municipal charter, and on the authority of *Paterson* v. *The Society,* upheld the constitutionality of the local option provision of the act *in so far as it might be exercised by the people in a popular referendum,* but on the same authority, struck down as unconstitutional the local option provision in so far as it attempted to vest the local option power in the governing body of the municipality, holding that "a

statute in the nature of a supplemental charter that is enacted to take effect upon its adoption by the governing body of a municipality is not a constitutionally enacted law."

The law of the *Paterson, Paul* and *McGuinness* cases may be summarized in four propositions:

1. Laws which vest appropriate local governing powers in municipalities are constitutional, whether the local option is committed to the governing body or to the people.

2. Laws which, while vesting no local governing powers in the municipality, are nevertheless in the nature of a supplement to the municipal charter (called "referendum statutes" in the McGuinness ~~option~~ OPINION), are constitutional *if* the commitment of the ~~opinion~~ OPTION is to the people, *and if* the question submitted to them is one of bare acceptance, involving neither the propriety of the provisions themselves as proper municipal regulations nor the expediency of granting or tendering a charter containing these provisions.

3. But such laws, i. e., "referendum statutes" as just referred to, are unconstitutional if they attempt to commit the local option power to the local governing bodies.

4. Local option is constitutionally limited to subjects necessary and appropriate to the municipal field of government, and may not be extended to subjects which by their nature are exclusively the concern of the state, such as, *e. g.,* attachment, descent, ejectment, which last mentioned is an essential element of rent control.

No addition or change in the law as above stated has resulted from any later case. In *Hayes* v. *Hoboken,* 92 N. J. L. 432 (E. & A. 1919) and *Hartman* v. *Board of Free-*

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holders, 127 N. J. L. 172 (Sup. Ct. 1941), involving laws which vested governing powers in local government, the delegation of the local option power to the governing body was approved upon a restatement of the principles of the *McGuinness* opinion. In *McCarthy* v. *Walter,* 108 N. J. L. 282 (E. & A. 1931), the *McGuinness* rule was followed as controlling in striking down the delegation of local option to the governing body, where it was vested with no governing powers, but only the power of local option. Nor is there any change in this law by the opinion in the case at bar, which cites the *Paterson, Paul* and *McGuinness* cases with complete approval, repeating (p. 524) the basic principle of the law as enunciated in the *McGuinness* case:

> "The legislature may impose its will as law upon municipalities, but, if some other will is to intervene, it must be that of the people who are to be governed by such municipal law and not an alien will, even though it be that of the governing body for the time being of the municipality."

This rule is ignored by the judgment upholding the validity of the statute at bar, for palpably the law operates *only* upon the intervention of the will of the governing body, and furthermore no powers of local government are vested in the municipality, under which circumstances only can there be a constitutional delegation of the local option power to the governing body, according to the law established by the *Paterson, Paul* and *McGuinness* cases.

This law, as we have just stated, is not expressly overruled or modified in any degree by the opinion rendered by the New Jersey Supreme Court in the case at bar, and, we contend further, no overruling or modification of the estab-

lished law can be read into the opinion by implication. The only language of the opinion where such an implication might be sought, is on page 525, where it is said:

> "Here, the statute does not concern acceptance of a proffered supplement to a local corporate charter, but rather the exercise of the police power in the fulfillment of the State's policy of relief from the socio-economic evils of critical area shortages of housing accommodations."

The first clause of this sentence is, of course, entirely irrelevant to the issue, for under the *McGuinness* rule, a statute concerning the acceptance of a proffered supplement to a municipal charter is constitutional only when the local option power is committed to the people, never when committed to the governing body, as it is in the statute at bar. As to basing a distinction on the second clause, "the exercise of the police power in the fulfillment of the State's policy," etc., Mr. Chief Justice Taney, in the *Licenses Cases,* 5 How. 504, 582, 46 U. S. 504, 583 (1847), said:

> "But what are the police powers of a State? They are nothing more or less than the power of government inherent in every sovereignty to the extent of its dominions."

To hold that the *McGuinness* rule shall apply hereafter only to laws which are *not* the exercise of the police power would only make a contemptible absurdity of the law which was so painstakingly evolved and crystallized in the *Paterson, Paul* and *McGuinness* cases, for all the statutes which figured in the evolution of the *McGuinness* doctrine were enacted in the exercise of the police power, *e. g., Riley* v. *Trenton, supra, Schwarz* v. *Dover, supra, Paul* v. *Gloucester*

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County, supra, and numerous others referred to in the *McGuinness* opinion. So also were the statutes involved in all the cases which have followed the *McGuinness* rule up to this time. *Hayes* v. *Hoboken, supra, Hartman* v. *Board of Freeholders, supra, McCarthy* v. *Walter, supra.* And the constitutional mandate upon which the *McGuinness* rule is based would become a meaningless nonentity. No distinguishing force can be attached to the adjective "socio-economic," for the only conceivable evils against which any laws may be directed are either social, which includes all the personal relations of an individual to society, or economic. Again, all the statutes which figured in the evolution of the *McGuinness* rule, and all the statutes concerned in the cases which have followed this rule as controlling, were directed against social or economic evils, or both.

Nor can any distinction be implied from the use of the word "critical," for this would be but to contradict the court's statement at page 514: "Emergency does not create or enlarge the remedial power; but it may furnish the occasion for its exercise in the essential common interest. *Home Building & Loan Ass'n* v. *Blaisdell,* 290 U. S. 398 (1934)."

If the opinion in the case at bar has not overruled or modified in any degree the law established by the *Paterson, Paul* and *McGuinness* cases, as we believe we have demonstrated, the judgment, being in total contradiction with that law, constitutes a deprivation of due process of law to the plaintiff. This deprivation is the more serious because administered by the highest court of New Jersey, leaving the plaintiff no recourse for further relief except such as may be extended, as a matter of grace, by this court.

We are aware of the rule laid down by Mr. Justice Holmes in *Paterson* v. *Colorado*, 205 U. S. 454 (1906), that *in general* the decision of a (state) court upon a question of law; however wrong and however contrary to previous decisions, is not an infraction of the Fourteenth Amendment merely because it is wrong or because earlier decisions are reversed.

But this ruling was prefaced by the statement: "It is unnecessary to lay down an absolute rule beyond the possibility of exception. Exceptions have been held to exist." We submit that the extraordinary circumstances of the present case are impelling reasons for such an exception in the present matter, which, we feel, should be controlled rather by the rule followed in *Great Southern Fireproof Hotel Co.* v. *Jones*, 193 U. S. 532 (1904), where this court felt constrained to reverse the Supreme Court of Ohio in a construction of the constitution of that state which the court felt was contrary to the great weight of authority in this country as to the meaning and scope of constitutional provisions substantially like those of the Ohio constitution which were concerned.

The fundamental principle of the *Paterson, Paul* and *McGuinness* cases, that the purely legislative function of determining the expediency, propriety or necessity of a law cannot be delegated to the people, still less to their proxies, their governing bodies, is generally established in all the states of the union. It is also the supreme law of the land by virtue of Article VI, Sec. II, and Article IV, Sec. IV of the federal constitution, which guarantees to every state a "republican", or representative form of government. Frequently cited as the leading case on the subject is *Barto* v. *Himrod*, 8 N. Y. 483, decided by the highest court of New

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York in 1853, a year before the same principles were enunciated in *Paterson* v. *The Society, supra.* In voiding a tax law which provided that "the electors shall determine by ballot at the annual election to be held in November next, whether this act shall, or shall not become law," the New York court said, at p. 494:

> "The law under consideration is in conflict with the constitution in various respects. Instead of becoming a law by the action of the organs appointed by the constitution for that purpose, it claims to become a law by the vote of the electors; and it claims that the popular vote may make it void and restore the former law. All the safeguards which the constitution has provided are broken down, and the members of the legislature are allowed to evade the responsibility which belongs to their office. . . .
>
> (p. 496) . . . "In short, the law was a mere proposition submitted to the people to be adopted or rejected as they pleased. If this mode of legislation is permitted and becomes general, it will soon bring to a close the whole system of representative government which has been so justly our pride. The legislature will become an irresponsible cabal, too timid to assume the responsibility of lawmakers, and with just enough wisdom to devise subtle schemes of imposture, to mislead the people. All the checks against improvident legislation will be swept away, and the character of the constitution will be radically changed."

See also *In re Opinions of the Justices,* 166 So. 706, 708, 232 Ala. 56 (S. Ct. 1936), where the court, after citing the *Barto* case, continued:

> "When all is said, the referendum here provided is an attempted delegation of legislative power, which, if once sanctioned, may easily lead to the

> breaking down of a representative government, a casting upon the people themselves, the duty to leave their ordinary avocations, and devote themselves to a study of the policy as well as administrative details of laws which they are called upon to enact or reject, with no opportunity to amend. Most certainly, it tends to lower the sense of responsibility of the legislator chosen by the people to counsel with his fellows and legislate for his constituents."

Equally emphatic is *People* v. *Barnett,* 344 Ill. 62, 176 N. E. 108 (S. Ct. 1931), citing the leading case of *Ex parte Wall,* 48 Cal. 315, 17 Am. Rep. 425:

> "To say that the legislators may deem a law to be expedient, provided the people shall deem it expedient, is to suggest an abandonment of the legislative function by those to whose wisdom and patriotism the Constitution has intrusted the prerogative of determining whether a law is or is not expedient. . . . On the question of the expediency of the law, the Legislature must exercise its own judgment definitely and finally. If it can be made to take effect upon the occurrence of an event, the Legislature shall declare the law expedient if the event shall happen, but inexpedient if it shall not happen. They can appeal to no other man or men to judge for them in relation to its present or future propriety or necessity; they must exercise that power themselves, and thus perform the duty imposed upon them by the Constitution."

Perhaps the most comprehensive and authoritative discussion of this subject is contained in the Federalist No. 10, by James Madison, published in the days of 1787, when the fate of the Constitution was hanging in the balance, and Shays' Rebellion had not yet been quelled. Madison's

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cogent arguments that without the safeguards of a republican, or representative form of government democracy must inevitably degenerate into mobocracy, with the tyranny of majorities over minorities and every form of factionalism and strife, are too well known and accepted to require repetition, but one of his remarks is of special significance in the present connection:

> "No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time, yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? . . ."

Madison's reference, of course, was to the danger of legislative power in local assemblies on subjects which ought to be the exclusive responsibility of a central legislature, which is the point of the *McGuinness* dictum that the exercise of such legislation by the people is especially objectionable when the power is delegated to their local governing bodies.

That the great weight of authority in this country supports the *McGuinness* doctrine and opposes its overruling is further evidenced by the fact that rent control is now an anachronistic anomaly, having been repudiated by 43 states where it formerly existed. In only one of the four other states where rent control is still authorized does the state law embody the local option principle which is offensive to the *McGuinness* doctrine, i. e., Maryland, whose statute

authorizes municipalities to make their own ordinances on the subject.

There are other special circumstances which we submit as impelling reasons for the allowance of certiorari in this matter. According to a recent statement by the State Rent Control Director, more than 500,000 dwelling units in New Jersey are subject to rent control. On this basis it would be most conservative to estimate that the number of landlords affected is far in excess of 100,000. As the contract involved in the case at bar was a typical renting agreement, the rights, remedies and liabilities of all these landlords, generally speaking, were finally determined and settled by the judgment against the plaintiff, as effectively as if they had been parties to the suit. The rightness ~~of~~ OR wrongness of the judgment which was rendered is therefore of the utmost moment, and deserves adjudication by the highest possible tribunal.

The second question raised by the plaintiff is whether there has been a deprivation of rights guaranteed by the 14th Amendment by reason of the enactment of the State Rent Control Law, and by reason of its operation. The argument made above on the score of the deprivation of these rights in the adjudication of the law by the New Jersey Supreme Court is also applicable to the second question, for it is inherent in the principles of due process of law and the equal protection of the laws that these rights, though always subject to the sovereign police power, may be disturbed only by the positive and definite action of the legislature itself, and by no one else. Therefore the act is objectionable because of its vagueness in authorizing the imposition of rent control only in "certain" areas of supposed housing shortage, without, however, identifying

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those areas, or providing any standards by which any determination of them could reflect the legislative will. The law is merely a blank check, a prenatal determination, so to speak, that the legislature deems rent control to be expedient whenever and wherever any of the 560 municipalities of the state may deem rent control to be expedient for any reasons it may choose. This is contrary to the well settled law, which we cited in the preceding argument.

Secondly, it is contended that no shortage of rental housing exists in any area of the state which would have warranted the legislature in declaring the existence of a serious public emergency. The factual basis for this contention is largely contained in the "Supplemental Appendix to Brief for Appellant" in the record as printed for the use of the court below. See also the original appendix to appellant's brief, and the appendix to the brief for defendants-respondents. The plaintiff's evidence in this regard is mentioned only perfunctorily in the opinion and the court based its finding almost entirely on the merely nominal declaration of the emergency in the preamble of the act, completely ignoring the extremely comprehensive and detailed evidence contained in the "Supplemental Appendix." The plaintiff's evidence is too voluminous to permit even a summarization of it in this petition, but the propriety of its consideration by this court cannot be doubted in view of *Mugler* v. *Kansas,* 123 U. S. 623 (1887), and *Chastleton Corp.* v. *Sinclair,* 264 U. S. 543 (1924), wherein Mr. Justice Holmes said:

> ". . . a Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared (citing authority). . . . A law depending upon the existence

> of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed. . . . In our opinion it is open to inquire whether the exigency still existed upon which the continued operation of the law depended. If about all that remains of war conditions is the increased cost of living, that is not in itself a justification of the act."

Mr. Justice Holmes further asserted that the United States Supreme Court might "ascertain as it sees fit any fact that is merely a ground for laying down a rule of law, and if the question were only whether the statute is in force today, upon the facts that we judicially know, we should be compelled to say that the law has ceased to operate."

The statute in question was the Ball Rent Control Act which Congress had enacted originally in 1919, for the City of Washington, and thereafter had twice extended. A few weeks after the *Chastleton* decision was handed down, Congress extended the Ball Act for the third time, solemnly declaring that the emergency still continued and rent control was necessary for the health, safety and welfare of the people. The act was promptly challenged, and it was struck down as unconstitutional on the authority of the *Chastleton* decision by the Court of Appeals of the District of Columbia. *Peck* v. *Fink,* 2 F. 2d, 912 (November 3, 1924), certiorari denied, January 5, 1925, 266 U. S. 631.

The present situation is very analogous. The New Jersey Rent Control Act merely continues the rent controls originally imposed by Congress in 1942 upon the whole nation as an essential part of the war emergency, when rents, prices of all goods and services, and even wages were

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simultaneously frozen as a war measure. The war has long been over and controls have long ago been abolished except over rents alone, and this remains in only five of the states. It is clearly within the power and duty of this court to inquire into the present factual justification of rent control in New Jersey, for as stated in the *Chastleton* opinion the basis for emergency legislation under the police powers of the states and the war powers of Congress is essentially the same.

Thirdly, it is contended that the act is void because of the absence therein of any finding of the existence of an emergency and a declaration of the existence thereof, the statements to this effect in the preamble being ineffective for the constitutional requisite. It is settled that the validity of an emergency rent control law, whether enacted under the police power or the war power, depends upon a formal legislative declaration of the emergency, *having the force of a law.* In *Block* v. *Hirsch,* 256 U. S. 135 (1921) the validity of the Ball Rent Control Act above mentioned was upheld upon the finding of the existence of an "emergency *declared by the statute.*" Presumably it would have been struck down in the absence of such a declaration in the statute. The same situation is presented by *Marcus Brown Co.* v. *Feldman,* 256 U. S. 170 (1921), involving a similar statute of New York, where the court said: "*By the above mentioned (statutes), a public emergency is declared to exist;*" and: "In this as in the previous case of *Block* v. *Hirsch,* we shall assume *in accordance with the statute* . . . that the emergency declared exists." Article IV, Section VII, Par. 6 of the New Jersey Constitution of 1947 provides: "The laws of this State shall begin in the following

style: 'Be it enacted by the Senate and General Assembly of the State of New Jersey' ", and in pursuance with this mandate, the courts of this state have always held that "the preamble is no part of the act." *Blackman* v. *Iles,* 4 N. J. 82 (Sup. Ct. 1950). And for more than one hundred years it has been settled that the legislative power "can be exercised only . . . in the mode designated and prescribed by the constitution," and that "a law enacted by any other authority, or in any other mode than that prescribed by the Constitution, is void." *Paterson* v. *The Society, supra.*

This contention was rejected by the New Jersey Supreme Court (p. 516), which held that the preamble sufficiently "made known" the Legislature's finding of an emergency and explained the reasons for the law and the objects in view, but we believe this view is erroneous and contrary to the authorities above cited, that it is not sufficient to merely "make known" these considerations in the case of a law whose validity depends upon a statutory declaration, even though in the case of ordinary laws the rule may be as the court stated. The case cited by the court, *Lane Distributors Inc.* v. *Tilton,* was just such an ordinary law, and not an emergency law.

Fourthly, it is contended that, regardless of formal considerations, the act is void under the rule that: "In whatever language a statute may be framed, its purpose and its constitutional validity must be determined by its natural and reasonable effect." *Henderson, et al.* v. *Mayor of New York,* 92 U. S. 259, 263 (1875).

The proofs show that rent control, as an effect of the law, exists in East Orange, but not in six surrounding municipalities, all of which form part of a single natural resi-

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dential community, all, in fact, being suburbs of the same city. The boundaries between the municipalities are only artificial, and utterly arbitrary as standards of classification, with the result that exactly similar properties in the same area are affected unequally by the law, some being arbitrarily discriminated against for the benefit of others. The burdens and hardships of rent control, which should be distributed equally throughout the area affected, are confined to the owners of property in only a part of the area. Under such an operation of the law, and such operation is inevitable from the scheme of the law, due process of law and the equal protection of the laws become a mere mockery.

Conclusion.

For the foregoing reasons, petitioner requests that this petition for a writ of certiorari be granted.

LESLIE H. JAMOUNEAU, *Pro Se,*
36 Halsey Street,
Newark 2, New Jersey.

APPENDIX A.

Opinion of Supreme Court of New Jersey.

Supreme Court of New Jersey

No. A-18 September Term, 1954.

Leslie H. Jamouneau,
Plaintiff-Appellant,

vs.

Claire E. Harner and Essex County Rent Control Board,
Defendants-Respondents,

and

Grover C. Richman, Jr., Attorney General of New Jersey,
Intervenor-Respondent.

Argued October 4, 1954; decided November 22, 1954.

On certified appeal to the Appellate Division of the Superior Court.

Mr. Saul A. Wittes argued the cause for appellant.

Mr. Thomas J. Brogan argued the cause for Property Owners Protective Association, Inc., *amicus curiae.*

Mr. Harry Weltchek argued the cause for James E. Bryan and Alice S. Bryan, *amici curiae.*

Mr. Joseph A. Murphy, Assistant Deputy Attorney General, argued the cause for defendants-respondents and intervenor-respondent. Mr. Grover C.

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RICHMAN, JR., Attorney General, and MR. CHESTER K. LIGHAM, Deputy Attorney General, Attorneys for intervenor-respondent. MR. MARSHALL CROWLEY, Attorney for the respondent Essex County Rent Control Board. MESSRS. BELL & ADUBATO, Attorneys for the respondent Harner.

The opinion of the court was delivered by
HEHER, *J.*

The basic issue here is the constitutional sufficiency of the State Rent Control Act of 1953, c. 216, N. J. S. 2A :42-14, et seq., entitled "An Act providing for the regulation of rents and possession of housing space, with respect to certain properties in certain municipalities, making an appropriation and repealing" the Rent Control Act of 1950, c. 234.

The Act of 1953 has a preamble reciting that (1) "A serious public emergency exists in certain areas of this State due to continued shortage of rental housing space;" (2) "Rent control is essential to the health, safety and general welfare of the people of this State;" and (3) "Federal rent control is presently due to expire" on July 31, 1953, "and the enactment of an adequate State rent control law, to become operative upon the termination of Federal rent control, is imperative." The Act expires by its own limitation on December 31, 1954.

The immediate controversy concerns the relation between the plaintiff landlord and the defendant tenant Harner arising by contract made between them March 1, 1952 for a tenancy from month to month of the first-floor southwest suite in an apartment house No. 74 Lenox Avenue, in East Orange, New Jersey, in plaintiff's ownership, then subject to federal rent control under the Emergency Price Control Act of 1942, 50 App. U. S. C. A., sec. 901, et seq., and the Housing and Rent Act of 1947, as amended,

50 App. U. S. C. A., sec. 1881, et seq., which expired by its own limitation in the particular area at midnight July 31, 1953. Under federal control, the permissible maximum rent was $60 per month until August 29, 1951, when it was increased to $72 per month by an order made September 4, 1951 by the Federal Area Rent Director pursuant to the power conferred by the cited federal statutes, and this order was still effective at the close of July 31, 1953. There has been no change in the maximum rent thus prescribed, either by the Federal authority during its incumbency or by the State authority since it assumed rent control under the cited State Act on August 1, 1953, and there has been no application for a modification of the fixed maximum, either by the plaintiff landlord or the defendant tenant. Notwithstanding the maximum of $72 per month permissible after September 4, 1951, the contract between the parties established the rent at $65 per month; and rent at this rate was paid until August 1, 1953, when the plaintiff landlord served upon the defendant tenant notice either to pay rent at the rate of $72 per month commencing September 1, 1953, or vacate the premises as of that date, and the result was a new agreement between the parties, after action for possession brought in the Essex County District Court, fixing the monthly rental at $72, and discontinuance of the suit for possession.

Entertaining doubt as to the validity of the new rent charge, and having in view the violation forfeiture provided by section 25 of the State Rent Control Act of 1953, N. J. S. 2A:42-38, the landlord brought a civil action under the Uniform Declaratory Judgments Act, N. J. S. 2A:16-50, et seq., in the Essex County District Court, naming the tenant and the Essex County Rent Control Board as defendants, for a declaration of his rights, status and legal relations under the tenancy, and in particular a declaration that the maximum monthly rental for the premises

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was "fixed" at $72 by the cited State Rent Control Act, and the agreement for the payment of rent at that rate was an enforceable obligation. By leave of court, the complaint was later amended to include the charge that, in the particulars to be adverted to, the State Act constitutes an infringement of the State Constitution of 1947 and serves to deprive plaintiff of his property in disregard of section 1 of the Fourteenth Amendment to the Federal Constitution, and to demand, in the alternative, if the Act be held valid, a declaration that section 19 of the State Act, N. J. S. 2A:42-32, "fixes the lawful base rental for any housing space in existence at the close of July 31, 1953, at the maximum amount of rent lawfully payable therefor as of the close of July 31, 1953, under any orders, applicable to such housing space, then in effect by authority of the" Federal Housing and Rent Act of 1947, as amended, and thus, by force of the State Act, "the present lawful rent" for the premises "is the maximum rent of $72 per month which was established" by the Federal authority on September 4, 1951, and the particular tenancy agreement embodies the elements of an enforceable contract.

The Attorney General moved for leave to intervene under R. R. 4:37-2, deeming it to be litigation involving the "interpretation and validity" of a "State regulation" under the State Rent Control Act; and the motion was granted.

Plaintiffs moved for summary judgment on the assumption that section 19 of the State Act fixed the "lawful base rental" for the subject housing space at the "maximum amount of rental lawfully payable therefor" as of July 31, 1953, under the Federal regulation, and so as a matter of law the rental agreement under review is legally sufficient. The Attorney General moved for a dismissal of the complaint on the contrary hypothesis, and also on the additional ground that the "validity of the rules and regula-

tions'' of the State director of rent control is the subject matter of the litigation and under R. R. 4:88-10 the review of an ''administrative rule'' of a State administrative agency can be had only by petition for a declaratory judgment addressed to the Appellate Division of the Superior Court.

Plaintiff's motion for summary judgment was denied, and the Attorney General's motion to dismiss was granted, the findings state for want of jurisdiction. It was considered the ''better practice,'' citing *Legg* v. *County of Passaic,* 122 N. J. L. 100 (Sup. Ct. 1939), for ''the inferior court to assume an act is constitutional until it is passed upon by the appellate court, unless it is so clearly in contravention that there can be no doubt about it;'' and the ''rules and regulations defining the method of determining lawful base rentals'' were held reviewable only by the Appellate Division of the Superior Court under R. R. 4:88-10.

Plaintiff's appeal to the Appellate Division from the consequent judgment of dismissal is here for decision by certification on our own motion.

Leave was given by the Appellate Division to Property Owners' Protective Association and James E. Bryan and Alice S. Bryan, as *amici curiae,* to brief and orally argue the issue of the constitutionality of the State Act of 1953. Counsel treats the constitutional issue raised by the second count of the complaint as ''an unadulterated question of law which must be determined and in which there is no factual dispute.''

I. As to jurisdiction:

The plaintiff landlord seeks a determination of the ''amount, if any, to which his lawful rent is restricted by the State rent control law''; and he urges that this inquiry involves ''questions of construction and validity arising from the statute,'' such as are within the jurisdictional

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clause of the Declaratory Judgments Act, N. J. S. 2A:16-53, in terms inclusive of questions of this class. As just indicated, section 19 of the State Rent Control Act, N. J. S. 2A:42-32, equates the "lawful base rental" for the particular housing accommodations with the "lawful" rent "payable" for such space as of July 31, 1953 under the now extinct Federal regulations, and directs that in the determination of the "amount of such base rentals, the orders, if any, then in effect under any Federal rent control shall be taken into consideration." The regulations promulgated under the authority granted by section 7 of the State Act, N. J. S. 2A:42-20, defines "lawful base rent" or "lawful rent" as the "rent actually and legally charged, received, payable or due" for the given housing space "for the rental period ending on July 31, 1953, or the last period immediately prior thereto."

The contention is that the rent "payable" within the intendment of section 19 of the State Act is the ceiling or maximum rent permissible under the Federal regulations on July 31, 1953; and this is plainly a question of "construction and validity" arising under the State statute, cognizable under the express terms of section 53 of the Declaratory Judgments Act, a remedial measure designed, N. J. S. 2A:16-51, "to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." Compare *McCrory Stores Corporation* v. *S. M. Braunstein, Inc.*, 102 N. J. L. 590 (E. & A. 1926); *New Jersey Bankers Ass'n* v. *Van Riper*, 1 N. J. 193 (1948); *New Jersey Turnpike Authority* v. *Parsons*, 3 N. J. 235 (1949); *Blackman* v. *Iles*, 4 N. J. 82 (1950); *Abelson's, Inc.* v. *N. J. State Board of Optometrists*, 5 N. J. 412 (1950).

And the county district courts are "courts of record" thus empowered by section 2A:16-52. Although a court of limited rather than general jurisdiction, the county district

court is nevertheless a court of record, for it proceeds in the main according to the course of the common law; it is not a special tribunal; it has power to determine its own jurisdiction, and the record of its proceedings and the judgment import absolute verity, and every intendment is made in favor of its judgments. These are the essential attributes of courts of record. *Hess* v. *Cole,* 23 N. J. L. 116 (Sup. Ct. 1851); *McPherson* v. *Cunliff,* 11 Serg. & R. 422 (Sup. Ct. Pa. 1824); *Fox* v. *Hoyt,* 12 Conn. 491 (Sup. Ct. of Err. 1838); *Re Dean,* 83 Me. 489, 22 Atl. 385 (Sup. Jud. Co. 1891); *Van Norman* v. *Gordon,* 172 Mass. 576,-53 N. E. 267 (Sup. Jud. Ct. 1899); *State* v. *Allen,* 117 Ohio St. 470, 159 N. E. 591 (Sup. Ct. 1927); *Commonwealth* v. *Sutton,* 327 Pa. 337, 193 Atl. 250 (Sup. Ct. 1937). And the county courts are "courts of record" by force of the creative statute itself. N. J. S. 2:6-7.

The circumstances here—the treble forfeiture, the continuing penalty, and the public interest in adherence to the policy—all make a strong case for the exercise of judicial discretion for a prompt adjudication of the issue.

The Attorney General suggests that the administrative regulation adverted to may be tested only by a proceeding in the Appellate Division under R. R. 4:88-10, and within the time limited by R. R. 4:88-15. But the validity of the regulation of necessity turns upon the sense and significance of the statute; and, recognizing this, the Attorney General does not object to a consideration of the administrative rule "in conjunction" with the questions concerning the meaning of the particular statutory provision and the constitutional integrity of the act, and concedes there is a "justiciable controversy under the facts of the case."

II. The statute:

If words are to be given their normal usage, the statutory concept of the "lawful" rental "payable" July 31,

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1953, as the "lawful base rental" for such housing space, must of necessity be the rental actually payable by the contract of the parties within the maximum established by the Federal regulation, and not the maximum itself. The distinction is between "payable" and "permissible." The adjective "payable" has reference to that which is to be paid; justly due; legally enforceable. A sum of money is said to be payable when a person is under obligation to pay it. *Black's Law Dictionary,* 4th ed. A thing is permissive or permissible when it can be permitted; allowable; not forbidden; that which may be done. *Webster's International Dictionary,* 2d ed. A rental payable under the contract, short of the rent ceiling prescribed by the law, represents the parties' own assessment of the rental value of the housing accommodations; and this constitutes the "lawful rental base" for the purposes of the State Act. The injunction of section 19 to take "into consideration," in determining the amount of such base rentals, the order of the Federal rent control "then in effect" is merely a ceiling limitation. In fine, the agreed rental cannot exceed the fixed maximum. The maximum is the ceiling, not the rent payable in the given case.

This construction is not violative of the interpretive canon that all provisions of a statute are to be related and effect given to each if that be reasonably possible. Such is the meaning of "payable" in context; it is not reasonably susceptible to the interpretation of "that may be paid" or "capable of being paid." Any doubt as to this is dispelled by the concluding provision of section 19 that for "premises constructed or first rented after" July 31, 1953, the amount of the "lawful rentals" for housing space shall be the rentals "lawfully payable" as of "the date of the first payment of rent" for such housing space. This clause makes clear the legislative understanding of the term "payable." The sense in which the words of a statute

were intended to be used is to be gleaned from the context Words of common use are to be taken in their natural, plain, obvious and ordinary signification, save as modified by the context. *Fedi* v. *Ryan,* 118 N. J. L. 516 (Sup Ct. 1937).

III. Constitutional limitations:

We are thus brought to a consideration of the questions involving the organic law.

First, the State Act is assailed by the plaintiff landlord as wanting (a) in a declaration of emergency "contained in the Act" itself; (b) "mention" of an existing emergency in the title; and (c) the actual existence of a housing shortage sufficient to support a legislative declaration of an emergency.

The maxim *salus populi suprema est lex* embodies a principle, of the essence of the police power, that from early times has been deemed basic to all civil government. The welfare of the people is the supreme law. *Bac. Max. reg.* 12; *Broom, Max.* 1-10. The police power is the law of necessity; it extends, in the words of Justice Holmes, to all the great public needs; it may be exerted in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. *Noble State Bank* v. *Haskell,* 219 U. S. 104, 31 St. Ct. 186, 55 L. ed. 112 (1911). An emergency is an unusual public exigency calling for the exercise of the police power to alleviate the common peril or need; and the inquiry in all such cases is whether in right reason the public urgency sustains the remedy invoked. Is the legislation addressed to a legitimate end, and are the measures taken reasonable and appropriate to that end? Emergency does not create or enlarge the remedial power; but it may furnish the occasion for its exercise in the essential common interest. *Home*

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Appendix A.

Building & Loan Asso. v. *Blaisdell,* 290 U. S. 398, 54 S. Ct. 231, 78 L. ed. 413, 88 A. L. R. 1481 (1934).

The basic right of private property perforce yields to an overriding public need. There is an ever-increasing demand for accommodation of the right of property and of contract to the inexorable needs and pressures of our complex economy and intricate social organism. The vital community interest has paramountcy. Utility rate contracts give way to this attribute of sovereign power; and the contractual arrangements between landlords and tenants as well. The determinative question is whether the police power has been exercised for an end which is in fact public. *Veix* v. *Sixth Ward B. & L. Asso. of Newark,* 310 U. S. 32, 60 S. Ct. 792, 84 L. ed. 1061 (1940); *Edgar A. Levy Leasing Co.* v. *Siegel,* 258 U. S. 242, 42 S. Ct. 289, 66 L. ed. 595 (1922); *Block* v. *Hirsh,* 256 U. S. 135, 41 S. Ct. 458, 65 L. ed. 865 (1921); *Marcus Brown Holding Co.* v. *Feldman,* 256 U. S. 170, 41 S. Ct. 465, 65 L. ed. 877 (1921). And a law that depends on the actuality of an emergency or a particular state of facts giving rise to the exercise of the power may lose its efficacy when the basic factual conditions no longer obtain.

The existence of an urgent public need due to housing scarcity is in its very nature for the determination of the legislative authority; but the declaration of an emergency is not conclusive, and the finding as well as the continuance of the exigency upon which the operation of the law depends are subject to judicial inquiry. *Home Building & Loan Asso.* v. *Blaisdell,* cited *supra; Hourigan* v. *North Bergen Township,* 113 N. J. L. 143 (E. & A., 1934). Compare *Woods* v. *Cloyd W. Miller Co.,* 333 U. S. 138, 68 S. Ct. 421, 92 L. ed. 596 (1948). Yet the Legislature has a broad discretion in assessing the need and the means requisite for the protection of the common weal; and fairly debatable questions of policy and procedure are resolved in favor

of the power. *Sproles* v. *Binford,* 286 U. S. 374, 52 S. Ct. 581, 76 L. ed. 1167 (1932); *Stephenson* v. *Binford,* 287 U. S. 251, 53 S. Ct. 181, 77 L. ed. 288 (1932); *Abelson's Inc.* v. *New Jersey State Board of Optometrists,* cited *supra; Reingold* v. *Harper,* 6 N. J. 182 (1951); *State Board of Milk Control* v. *Newark Milk Co.,* 118 N. J. Eq. 504 (E. & A. 1935).

There is a presumption of the constitutional sufficiency of a legislative enactment; and the onus of a showing *contra* is on him who interposes the challenge. *Hart* v. *Scott,* 50 N. J. L. 585 (E. & A. 1888); *State* v. *Dolbow,* 117 N. J. L. 560 (E. & A. 1937); *Sears, Roebuck & Co.* v. *Camp,* 124 N. J. Eq. 403 (E. & A. 1938). The finding of the Legislature is presumed to have the support of facts known to it "unless facts judicially known or proved preclude that possibility;" generally, it is "not the province of a court to hear and examine evidence for the purpose of deciding again a question which the legislature has already decided;" its function "is only to determine whether it is possible to say that the legislative decision is without rational basis." *Clark* v. *Paul Gray,* 306 U. S. 583, 59 S. Ct. 744, 83 L. ed. 1001 (1939). Every intendment is indulged in favor of the validity of the act. It is to be assumed that the act was directed to an exigency made manifest by experience, and the remedy was in accordance with the known need. *Ward & Gow* v. *Krinsky,* 259 U. S. 503, 42 S. Ct. 529, 66 L. ed. 1033 (1922). These principles are largely applicable to local legislative acts in the exercise of a delegated police power. *New Orleans Public Service* v. *New Orleans,* 281 U. S. 682, 50 S. Ct. 449, 74 L. ed. 1115 (1930).

The Legislature made known its finding of a "serious public emergency" in "certain areas" of the State, growing out of a continued housing shortage, and the imperative need of State rent control to become operative upon the cessation of Federal rent control. This by means of

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a preamble, a time-honored Legislative prefatory device explanatory of the reasons for the law and the objects in view. There is no constitutional principle or peremptory Legislative practice ordaining a declaration of the underlying emergency in the purview of the act. Relating as it does to the need for the legislation, and not in itself an act of legislation, the finding is of no sense a constituent element of the enacting clause. Compare *Lane Distributors, Inc.* v. *Tilton,* 7 N. J. 349 (1951). The preamble evidences the facts which it recites. *Ex parte Kelly,* 123 N. J. Eq. 489 (Chan. 1938), affirmed *sub. nom. McRell* v. *Kelly,* 124 N. J. Eq. 350 (E. & A. 1938). The enacting clause of a statute may be extended by the preamble, but cannot be restrained by it. *Brown* v. *Erie R. Co.,* 87 N. J. L. 487 (E. & A. 1914). And, by the same reasoning, it is not required legislative procedure that there be "mention" of the emergent conditions in the title. Here, the nature of the power invoked and the grounds for its exercise are also evident in the terms of the purview.

Nor is there a showing that the declared housing shortage was and is in fact nonexistent. The point is that six towns "abutting or closely neighboring East Orange, viz: South Orange, Glen Ridge, Bloomfield, West Orange, Maplewood and Montclair, have not invoked" the Act; and the reasoning is that this is conclusive proof, "not only that there is no shortage of housing in these six towns, which provide housing for 169,890 persons adjoining or in close proximity to East Orange," itself having a population of 79,340, "but also that there is no real or substantial housing shortage in East Orange," since all of these towns "are part of a single residential community, and the flow of tenants from one town to another is as fluid and unobstructed as it would be within any single place," and "Any East Orange tenant who is dissatisfied with housing accommodations in that city, whether because of scarcity or

for any other reason, is free to move to any of the other towns, where it must be assumed that housing is in adequate supply and reasonably priced, for otherwise these towns would have adopted rent controls long before this." The conclusion is that there "can be no shortage in a town which does not also exist in the surrounding towns which with it make up a single common community."

But this is a *non sequitur*. The assumption is ill-founded. The Legislature found a public emergency in "certain areas" of the State; and it sought to reach these areas by providing for rent control, section 28, N. J. S. 2A:42-41, "operative in any municipality in which the governing body shall adopt a resolution reciting that there is a housing space shortage therein and that rent control is required in such municipality for the protection, safety, health and general welfare of the people of such municipality." A copy of such resolution "shall be published, prior to its adoption, at least once in one or more newspapers published or circulated" in the municipality. This was done here; but no objection was interposed, nor was there a demand for a hearing to determine the propriety of the proposed action, or for a judicial review after the adoption of the resolution. And there is provision, section 29, N. J. S. 2A:42-42, for decontrol and recontrol by the selfsame process.

This would seem to be an eminently practical way of covering the areas of the State in need of rent control, and thus to avoid statewide control in excess of the need and the attendant risks of going beyond the reasonable limits of the power. At all events, such was deemed to be the prudent course by the legislative authority, and the choice of means resided there, subject to judicial inquiry only for arbitrary action. And we find no abuse of the power. There is no basis whatever for holding that migration would solve the problem; and, moreover, the power may not in good

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reason or logic be thus confined to cases where the housing shortage is irremediable by movements of population out of the troubled area. Other considerations aside, population shifts make for social and economic dislocations in themselves inimical to the public welfare. It is proved that factual findings by the local governing bodies have brought rent control in communities representing 75% of the aggregate population of Essex County and 54% of the whole population of the State. For want of a showing *contra*, the public emergency declared by the preamble must be assumed to exist. *Block* v. *Hirsh*, cited *supra*. Compare *People ex. rel. Durham R. Corporation* v. *La Fetra*, 230 N. Y. 429, 130 N. E. 601 (Ct. of App. 1921).

And these considerations render untenable the point that for the same reason—*i. e.* that "as an effect of the law," there is rent control in East Orange, but not in the six surrounding municipalities, "all of which are part of a single, natural, residential community," the statute in its operation offends against the due process and equal protection clauses of the Fourteenth Amendment, and takes private property for public use without just compensation.

True, as observed in *Washington National Insurance Co.* v. *Board of Review*, 1 N. J. 549 (1949), cited by appellant, equality of right is fundamental in both the due process and equal protection guaranties. But this assurance of like treatment to all persons similarly situated is not violated by classification which is reasonable and not arbitrary, in that it rests upon substantial differences fairly related to the public purpose to be served. Where the end is one to which legislative power may properly be addressed, it is enough "if it can be seen that in any degree, or under any reasonably conceivable circumstances, there is an actual relation between the means and the end." *Stephenson* v. *Binford*, cited *supra*. An exercise of the police power is not to be struck down as in contravention

of the due process and equal protection clauses; "unless it be palpably unreasonable or unduly discriminatory;" and fairly debatable questions as to need and the propriety of the means employed to meet the exigency are within the legislative province. *Reingold* v. *Harper,* cited *supra.* Said Chief Justice Hughes: "To make scientific precision a criterion of constitutional power would be to subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the 14th Amendment was intended to secure. * * * When the subject lies within the police power of the State, debatable questions as to reasonableness are not for the courts but for the legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome." *Sproles* v. *Binford,* cited *supra.* It is settled, said Chief Justice White long ago, "as the essential result of the elementary doctrine that the equal protection of the law clause does not restrain the normal exercise of governmental power, but only abuse in the exertion of such authority, therefore that clause is not offended against simply because, as the result of the exercise of the power to classify, some inequality may be occasioned. That is to say, as the power to classify is not taken away by the operation of the equal protection of the law clause, a wide scope of legislative discretion may be exerted in classifying without conflicting with the constitutional prohibition." *Louisville & N. R. Co.* v. *Melton,* 218 U. S. 36, 30 S. Ct. 676, 54 L. ed. 921 (1910).

The question is whether the distinctions are fairly in keeping with the object and purpose of the law. While the power of the State to distinguish, select, and classify objects of legislation is not without limitation, "necessarily this power must have a wide range of discretion. * * * There is therefore no precise application of the rule of

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reasonableness of classification, and the rule of equality permits many practical inequalities. And necessarily so. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things." *Magoun* v. *Illinois Trust & Savings Bank,* 170 U. S. 283, 18 S. Ct. 594, 42 L. ed. 1037, 1043 (1898). Classification by legislation "is not invalid because not depending on scientific or marked differences in things or persons or in their relations. It suffices if it is practical, and is not reviewable unless palpably arbitrary." *Orient Insurance Co.* v. *Daggs,* 172 U. S. 557, 19 S. Ct. 281, 43 L. ed. 552 (1899). The constitutional command, said Mr. Justice Black, "for a state to afford 'equal protection of the laws' sets a goal not attainable by the invention and application of a precise formula. This Court has never attempted that impossible task. A law which affects the activities of some groups differently from the way in which it affects the activities of other groups is not necessarily banned by the Fourteenth Amendment. * * * Otherwise, effective regulation in the public interest could not be provided, however essential that regulation might be. For it is axiomatic that the consequence of regulating by setting apart a classified group is that those in it will be subject to some restrictions or receive certain advantages that do not apply to other groups or to all the public. * * * This selective application of a regulation is discrimination in the broad sense, but it may or may not deny equal protection of the law. Clearly, it might offend that constitutional safeguard if it rested on grounds wholly irrelevant to achievement of the regulation's objectives." *Kotch* v. *River Port Pilot Commisioners,* 330 U. S. 552, 67 S. Ct. 910, 91 L. ed. 1093 (1947).

It is not possible to lay down an "infallible or all-inclusive" test by which it may be determined whether "a given difference between the subjects of legislation is

enough to justify the subjection of one and not the other to a particular form of disadvantage;" the nearest approach to a definite rule is that "while the difference need not be great, the classification must not be arbitrary or capricious, but must bear some just and reasonable relation to the object of the legislation;" a particular classification is not invalidated by the Fourteenth Amendment "merely because inequality actually results;" every classification of persons or things for regulation by law "produces inequality in some degree," but the law "is not thereby rendered invalid, unless the inequality produced be actually and palpably unreasonable and arbitrary." *Bayside Fish Flour Co.* v. *Gentry,* 297 U. S. 422, 56 S. Ct. 513, 80 L. ed. 772 (1936).

The Fourteenth Amendment "does not prohibit legislation merely because it is special, or limited in its application to a particular geographical or political subdivision of the state." *Fort Smith L. & T. Co.* v. *Board of Improvement of Paving District,* 274 U. S. 387, 47 S. Ct. 595, 71 L. ed. 1112 (1927). It suffices if the regulation be of general application within the territory of its operation. A statute authorizing municipalities to abate the smoke nuisance does not give rise to an arbitrary classification in defiance of the equal protection clause "because certain cities are included and others omitted in the statute." *Northwestern Laundry* v. *Des Moines,* 239 U. S. 486, 36 S. Ct. 296, 60 L. ed. 396 (1916). In a case reviewing an ordinance barring the operation of a brickyard within described limits in a city, Mr. Justice McKenna, adverting to the requirement that the exercise of the police power be free from arbitrary action, said: "The principle is familiar, but in any given case it must plainly appear to apply. It is to be remembered that we are dealing with one of the most essential powers of government—one that is the least limitable. It may, indeed, seem harsh in its exercise, usually is on some individ-

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ual, but the imperative necessity for its existence precludes any limitation upon it when not exerted arbitrarily. * * * It may be that brickyards in other localities within the city where the same conditions exist are not regulated or prohibited, but it does not follow that they will not be." *Hadacheck* v. *Sebastian,* 239 U. S. 394, 36 S. Ct. 143, 60 L. ed. 348 (1915). Where the regulation, in itself not unreasonable and arbitrary, operates uniformly upon all persons similarly situated in the particular district, the district itself (within a municipality) not appearing to have been arbitrarily selected, it cannot be judicially declared that there is a deprivation of property without due process of law, or a denial of the equal protection of the laws, within the meaning of the Fourteenth Amendment. *Reinman* v. *Little Rock,* 237 U. S. 171, 35 S. Ct. 511, 59 L. ed. 900 (1915), Pitney, J.

Here, there is no suggestion of artifice or oppression; there can be no doubt that the particular regulation constitutes a *bona fide* endeavor to alleviate, by practical means, conditions reasonably deemed prejudicial to vital socio-economic interests of society, a field that in its nature involves great freedom of discretion. And the neighboring communities may well find the need for like action; presumably, none exists now. At all events, the record does not make a showing of arbitrary classification or an illusory application of the statutory policy.

But it is urged that, even so, the "Act subjects the operation of a State law to local control without requirement for proper public notice, and with no requirement for public hearing," a delegation of power deficient in "certain procedural requirements which are constitutionally necessary to preserve due process of law and the equal protection of the laws." This has reference to sections 28 and 29, N. J. S. 2A:42-41, 42. As stated *supra,* there is provision for the advance publication of the proposed operative resolution.

The province of the local governing body is the fulfillment of the categorically declared legislative policy. Such regulation is purely a legislative function; and even when the power is exercised through a designated subordinate agency the hearing on notice essential to judicial proceedings is not indispensable to a valid exercise of the power. If the regulation undertaken be arbitrary or unreasonable, then ample relief may be had in the judicial forum; and thereby the demand of the due process clauses is satisfied. *State Board of Milk Control* v. *Newark Milk Co.*, cited *supra.*

The Legislature would not be under a duty to give notice and provide a hearing were it directly to fix rents on a statewide basis or in particular areas of the State where the need was manifest. And in the Federal jurisdiction the Congress need not lay down that requirement when it delegates the function to an administrative agency; it suffices if there be a judicial review of the administrator's action. Where only property rights are involved, mere postponement of the judicial inquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the issue be adequate; delay in the judicial determination of property rights is ofttimes unavoidable where it is essential that governmental needs be immediately satisfied. And so, Mr. Justic Douglas distinguished the cases typified by *Morgan* v. *United States,* 304 U. S. 1, 58 S. Ct. 773, 82 L. ed. 1129 (1938), as treating of statutes requiring that procedure, and not involving "the exigencies of wartime conditions and the insistent demands of inflation control," whereas in the case there under consideration the Congress chose not to fix rents in specified areas or on a national scale by legislative fiat, but to provide a method "designed to meet the needs for rent control as they might arise and to accord some leeway for adjustment within the formula which it prescribed," and at the same time avoid "lengthy and costly

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trials" before the rent control order could be made effective and the delay which "might have defeated the program of price control." *Bowles* v. *Willingham*, 321 U. S. 503, 64 S. Ct. 641, 88 L. ed. 892 (1944). We may well have recourse to Mr. Justice Holmes' exposition of the principle: "Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule." *Bi-Metallic Investment Co.* v. *State Board of Equalization*, 239 U. S. 441, 36 S. Ct. 141, 60 L. ed. 372 (1915).

But it is insisted that the Act "relegates the operation of a state law to local option without the sanction of a popular referendum," in contravention of the principle of *Attorney-General* v. *McGuinness*, 78 N. J. L. 346 (E. & A. 1910). The *amici curiae* maintain that that case sustains the thesis that it is fundamental in the State Constitution that the "legislative will may be imposed as law upon municipalities," but if "any other will is to intervene between the Legislature and the municipalities, it must be the will of the people themselves and not an alien will," and the "grant of the power to exercise the option to any other body," even the local governing body, constitutes "the intervention of an alien authority and renders the legislation void." But that doctrine has no pertinency here.

There, the Court of Errors and Appeals, following *Paterson* v. *The Society for Establishing Useful Manufactures*, 24 N. J. L. 385 (Sup. Ct. 1854), and overruling *De Hart* v. *Atlantic City*, 62 N. J. L. 586 (Sup. Ct. 1898), held

that "a statute in the nature of a supplemental charter that is enacted to take effect upon its adoption by the governing body of a municipality is not a constitutionally enacted law." This on the hypothesis of the first-cited case that the submission of the charter provisions of a municipal corporation to the "would-be corporations" would not infringe the constitutional principle that "legislation cannot be directly exercised by the people," inasmuch as "neither the propriety of the provisions themselves as proper municipal regulations nor the expediency of granting or tendering a charter containing these provisions" to the municipality, the only legislative questions involved, was submitted to the people, and, though the legislative will may be imposed as law upon the municipalities, "if any other will is to intervene between the legislature and such municipalities, it must be the will of the people who are to be governed by such law and not an alien will, even though it be that of the governing body for the time being of the municipality." Such submission of charter provisions, it was declared, is not to the inhabitants "as a part of the sovereign people but simply as corporators;" their affirmative vote is "an act of acceptance not of legislation;" and the "acceptance of the statute" is "not an act of lawmaking or the action of lawmakers or of a lawmaking body;" from a constitutional standpoint, "the acceptance by a municipal corporation of the provisions of a legislative act is one thing," and "the delegation of legislative power to municipal corporations is quite another and different thing." Of the former—*i.e.* "referendum statutes," *Paterson* v. *The Society for Establishing Useful Manufactures,* cited *supra,* is the leading example; of the latter—*i.e.* "statutes delegating powers of local government," *Paul* v. *Gloucester,* 50 N. J. L. 585 (E. & A., 1888), is distinctive. Justice Van Syckel there said: "The validity of this law may be rested securely upon the right of the legislature to

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delegate the power of local government to political subdivisions of the state." In a word, the distinction is between the delegation of legislative power upon all municipalities of a given class, exercisable like all legislative power by the governing bodies of such municipalities, and the conferring of no power at all except upon those municipalities which shall adopt the act. The difference is between *acceptance* and the *exercise* of legislative power.

In the later case, the "basic and fundamental principle" of the *McGuinness* case was assessed thus: "A critical reading of the decision" there "leads irresistibly to the conclusion that a statute in the nature of a supplemental charter, which cannot take effect unless through the exercise of a discretion or of a will intervening between the legislature and the voter, is not a constitutionally enacted law." *McCarthy* v. *Walter,* 108 N. J. L. 282 (E. & A., 1931). See, also, *Hartman* v. *Board of Chosen Freeholders,* 127 N. J. L. 170 (Sup. Ct. 1941).

Here, the statute does not concern acceptance of a proffered supplement to a local corporate charter, but rather the exercise of the police power in the fulfillment of the State's policy of relief from the socio-economic evils of critical area shortages of housing accommodations. The act provides for administration of the policy on the county level, under State regulation and supervision, in all municipalities whose governing bodies shall find a local housing space shortage making rent control imperative for the "protection, safety, health and general welfare of the people" of the particular municipality, of and by itself an integral part of the exercise of the police power under delegation by the Legislature to all municipalities alike, exercisable if and when the specified public urgency comes into being, indeed an essential use of the power if the legislative policy is to be realized—subordinate legislation, as it were, controlled by a definitive statutory standard. When the nature of the power is considered, the question is readily resolved.

Appendix A.

The rule-making power conferred upon the State Director by sections 7 and 9 of the statute, N. J. S. A. 2A:42-20-22, is contained by certain and definite standards therein laid down, as a means of furthering the central policy of the legislation; and so, without necessarily suggesting that these measures, and the regulations promulgated in the purported exercise of the power, are in all respects legally sufficient, there is ample statutory specification to sustain the grant against the contention of an unlawful delegation of legislative power. We are not obliged now to assess the regulations individually for legal soundness.

The *amici curiae* argue that section 16 (h) of the Act, N. J. S. A. 2A:42-29 (h), bars "any general rent increase unless the landlord's annual operating expenses," as defined in section 17 (e) (4), "are greater than 75% or 80% of the landlord's annual income," as defined in section 17 (e) (3), and is therefore not "a provision for a 'fair and equitable' rent." The regulation is assailed as penalizing a landlord's efficiency in keeping operating expenses below 80% of the gross income from the particular building, by denying him a "rent increase." It is said that the landlord "who spends more time in lessening his costs is precluded from realizing the fruits of his labors, while a landlord who it not so frugal and lets his expenses rise needlessly may get a rent increase; all he need show is that the expenses are 'necessary to the operation and maintenance of the building,'" referring to section 17 (e) (4), cited *supra*.

This is not a realistic assessment of these statutory provisions. We are here concerned with the constitutional integrity of the statute itself, not the administration of the statutory policy.

The obvious design of the Act is the accommodation of the public interest and the landlord's right of private property by the principle of a fair and equitable rental return to the landlord. Such is the indubitable reason of the law.

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Appendix A.

The rule-making power concerns the effectuation of the "purposes" of the Act. The grant relates, *inter alia*, section 7 (b), (e), N. J. S. A. 2A:42-20, to "the control of rents within specified areas of operation consistent with the purposes" of the Act, "economic conditions and the protection of the public," and "the prevention of manipulative and speculative practices of rental and leasing practices which tend to unreasonably increase rentals."

Rent increases are allowable, by means of the procedures laid down in the Act, including a hearing on notice and appellate review, section 16, N. J. S. A. 2A:42-29, to compensate the landlord (a) "for increases" in operative and maintenance costs; (b) a "major improvement to the dwelling unit which is more than ordinary repair and maintenance;" (c) for an "increase" in services or equipment, and the like; and on a showing (d) that the rent being paid "is substantially lower than the rent being paid for comparable dwelling units in the area or subarea;" (e) that the tenant has increased the number of subtenants or roomers in the rented dwelling unit; (f) that the premises are being occupied by "more than a normal number of persons" as a result of the tenant's "allowing additional relatives or other persons" to reside in the unit "as members of his household or otherwise;" or (g) "special or unusual circumstances" making it "impossible to safely maintain and operate the building without additional rental;" and then, in the disjunctive, comes subdivision (h), heretofore adverted to, providing for such relief where the "net operating income from the building is less than a fair net operating income (the net operating income shall not be considered less than fair if it is 25% or more of the annual income in the case of a building containing less than five dwelling units or is 20% or more in the case of a building containing five or more dwelling units)." The adjustment under this subsection shall be in "such amount as is neces-

sary to bring the net operating income from the building (expressed as a percentage of annual income after adjustment) to the median net operating income of landlords generally;" and where the building falls within a class which "normally experienced considerably lower percentages of net operating income than the median," the "amount of adjustment may be determined on a basis" yielding "a lower percentage of net operating income than the median and which would be fair and equitable for that class of buildings." The county rent control agency and the county rent control review board are enjoined, section 17, N. J. S. A. 2A:42-30, to take into account, in determining applications for a rent increase, taxes, costs of operation and maintenance, the kind, quality and quantity of the services "furnished or withheld," and "other relevant and material facts."

And these administrative considerations and standards, designed to effectuate the statutory policy, govern also in the exercise of the rule-making function. The power is not without limitations. The legislative principle thus declared embodies the primary standard or rule of action, and the terms of the delegation control the exercise of the power to that end; and thereby constitutional requirements are satisfied. Out of these provisions, singly and as an integrated whole, emerge the ruling principle and policy and the implementing standard of subordinate action, clear and unmistakable. The metes of administrative action are charted with reasonable certainty. The terms of the grant have the requisite definitive quality. *State Board of Milk Control* v. *Newark Milk Co.*, cited *supra*.

The contention of constitutional infirmity has not been sustained.

The judgment dismissing the complaint, molded into a judgment for defendants on the merits in conformity with this opinion, is affirmed; and the cause is remanded for proceedings accordingly.

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APPENDIX B.

Mandate on Affirmance.

SUPREME COURT OF NEW JERSEY

APPEAL DOCKET No. 1582.

LESLIE H. JAMOUNEAU,
Plaintiff-Appellant,

vs.

CLAIRE E. HARNER and ESSEX COUNTY RENT CONTROL BOARD,
Defendants-Respondents,

and

GROVER C. RICHMAN, JR., Attorney General of New Jersey,
Intervenor-Respondent.

Civil Action.
On Appeal.
Mandate on Affirmance.

This cause having been duly argued before this Court by Mr. Saul A. Wittes, counsel for the appellant and Mr. Thomas J. Brogan, Counsel for Property Owners Protective Assoc. Inc., *amicus curiae,* and Mr. Harry Weltchek, counsel for James E. Bryan and Alice S. Bryan, *amici curiae,* and Mr. Joseph A. Murphy, counsel for defendant respondent and intervenor respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Essex County District Court is affirmed with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless other-

wise ordered by this Court, and that the record be remitted to the Essex County District Court to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

WITNESS the Honorable Arthur T. Vanderbilt, Chief Justice, at Trenton on the 22nd day of November, 1954.

JOHN H. GILDEA,
Clerk of the Supreme Court.

FILED
Nov. 22 1954
John H. Gildea
Clerk

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APPENDIX C.

SUPREME COURT OF NEW JERSEY

Docket No.

LESLIE H. JAMOUNEAU,
Plaintiff-Appellant,

vs.

CLAIRE E. HARNER and ESSEX COUNTY RENT CONTROL BOARD,
Defendants-Respondents,

and

GROVER C. RICHMAN, JR., Attorney General of New Jersey,
Intervenor-Respondent.

Civil Action.

On Appeal from Essex County District Court.

Sat below:
Conklin, *J. D. C.*

PETITION FOR CERTIFICATION UNDER R. R. 1:10-1(a).

GROVER C. RICHMAN, JR.,
Attorney General of New Jersey,
State House Annex, Trenton, N. J.,
Intervenor-Respondent.

BENJAMIN C. VAN TINE,
Of Counsel with Intervenor-Respondent,
State House Annex, Trenton 7, N. J.

Appendix C.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of New Jersey:

The Intervenor-Respondent, Grover C. Richman, Jr., Attorney General of New Jersey, respectfully shows:

1. There is presently pending before the Superior Court, Appellate Division, an appeal taken by the plaintiff-appellant from a judgment of the Essex County District Court.

2. In the said appeal, there has been brought in question the constitutionality of the State Rent Control Act of 1953 (N. J. S. A. 2A:42-14, et seq.; P. L. 1953, ch. 216).

3. There is presently pending in the Superior Court, Law Division, Union County, an action instituted by the Property Owners Protective Association et als wherein the question of constitutionality of the State Rent Control Act of 1953 has also been brought in question.

4. The last named action was held by the Court pending an application by counsel for the said Property Owners Protective Association to file a brief amicus curiae and engage in the oral argument in the above entitled matter.

5. Upon application the Appellate Division entered its Order permitting the said Property Owners Protective Association to file a brief amicus curiae and to engage in the oral argument. The matter was then listed for argument for June 28, 1954.

6. The matter will not be heard by the Appellate Division on June 28th but instead the argument has been continued to a later date.

7. There is pending before the Superior Court, Law Division, Essex County, a further case wherein the constitutionality of the State Rent Control Act of 1953 has been brought in question.

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8. It is respectfully submitted that an early determination of the constitutionality of the State Rent Control Act of 1953 is needed in the public interest.

9. Your petitioner is authorized by counsel for the parties in interest to advise the Court that they agree that the public interest requires the early determination of the constitutional question by our highest court, and that certification should be granted.

Wherefore, your petitioner, Grover C. Richman, Jr., Attorney General, respectfully prays that the Court shall allow certification of the above appeal upon its own motion under R. R. 1:10-1(a).

Respectfully submitted,

GROVER C. RICHMAN,
Attorney General of New Jersey,

By: BENJAMIN C. VAN TINE,
Benjamin C. Van Tine,
Of Counsel with Intervenor-Respondent.

APPENDIX D.

Order for Certification.

SUPREME COURT OF NEW JERSEY.

LESLIE H. JAMOUNEAU, Plaintiff-Appellant, *vs.* CLAIRE E. HARNER, *et als.*, Defendants-Respondents.	On Motion for Certification Under R. R. 1:10-1(a).

This matter having been duly presented to the Court, it is Ordered that the motion for certification under R. R. 1:10-1(a) is granted.

Witness, the Honorable Arthur T. Vanderbilt, Chief Justice, at Trenton, this twenty-eighth day of June 1954.

JOHN H. GILDEA,
Clerk.

FILED
Jun 28 1954
John H. Gildea
Clerk

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APPENDIX E.

Constitutions and Statutes Involved.

Constitution of the United States, Amendment XIV, Sec. 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the United States, Art. I, Section X, Par. 1.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Constitution of the United States, Art. VI, Par. 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Constitution of the United States, Art. IV, Section IV.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Appendix E.

Constitution of New Jersey, 1947, Art. I, Par. 1.

All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

Constitution of New Jersey, 1947, Art. III.

The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

Constitution of New Jersey, 1947,
Art. IV, Section VII, Par. 6.

The laws of this State shall begin in the following style:

> "Be it enacted by the Senate and General Assembly of the State of New Jersey".

Pertinent provisions of the New Jersey State Rent Control Act of 1953, N. J. S. 2A:42-14, et seq.:

The act contains the following preamble:

> "Whereas, A serious public emergency exists in certain areas of this State due to continued shortage of rental housing space; and
>
> "Whereas, Rent control is essential to the health, safety and general welfare of the people of this State; and
>
> "Whereas, Federal rent control is presently due to expire on July thirty-first, one thousand nine hundred and fifty-three, and the enactment of an adequate State rent control law, to become operative

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upon the termination of Federal rent control, is imperative; now, therefore,"

Sec. 28 (N. J. S. 2A:42-41). Rent control under this act shall be operative in any municipality in which the governing body shall adopt a resolution reciting that there is a housing space shortage therein and that rent control is required in such municipality for the protection, safety, health and general welfare of the people of such municipality. A certified copy of any such resolution shall be transmitted by the clerk of the municipality to the State Rent Control Director and a like copy shall be transmitted to the county rent control agency of the county wherein such municipality is located. A copy of any such resolution shall be published, prior to its adoption, at least once in one or more newspapers published or circulated in the municipality.

Sec. 29 (N. J. S. 2A:42-42). The governing body of any municipality may at any time, by resolution, redetermine whether State rent control shall be operative in such municipality, and may rescind any resolution adopted pursuant to this act, or, after any such rescission, again adopt a similar resolution to reinstate State rent control. Copies of any such resolution shall be filed as required for an original resolution relating to State rent control.

(The clause in Section 29 permitting reinstatement of rent control was repealed in the 1954 amendment of the act.)

Sec. 25 (N. J. S. 2A:42-38). Any landlord who shall violate any provision of this act, or of any order of a county rent control agency, or of a county rent control review board made pursuant to this act, shall forfeit to his tenant a sum equal to three times the amount of any rent received by him from his tenant in excess of the lawful base rental and of any rent increase allowed by the county rent control agency,

county rent control review board, or by the court, but not in excess of one year's lawful rent, to be recovered in an action in the county district court. Every such action may be brought in a summary manner and shall be heard by the court without a jury. Judgment may be rendered for any amount which is found to be due to the tenant under the provisions of this section.

Acknowledgment of Service.

Service of the within Petition for Writ of Certiorari is hereby acknowledged by the undersigned on the date stated. On February 14, 1955.

GROVER C. RICHMAN, JR.,
Attorney General of New Jersey,
Intervenor-Respondent,

By: SACKETT M. DICKINSON,
Sackett M. Dickinson,
Deputy Attorney General of New Jersey.

BLEED THROUGH POOR COPY

Certificate of Service.

STATE OF NEW JERSEY, }
COUNTY OF UNION. } ss.:

SAUL A. WITTES, of full age being duly sworn upon his oath according to law, deposes and says that he served the within petition for writ of certiorari as follows: On Bell and Adubato, Esqs., attorneys of record for respondent, Clair E. Harner, on February 14, 1955 by leaving a true copy of the same at their office, 790 Broad Street, Newark, N. J., personally with June Borak, their secretary and clerk in charge thereof, and on Marshall Crowley, Esq., attorney of record for respondent, Essex County Rent Control Board, on February 14, 1955 by leaving a true copy of the same at his office, 810 Broad Street, Newark, N. J. personally with his secretary and clerk in charge thereof.

SAUL A. WITTES.
(Saul A. Wittes.)

Subscribed and sworn to before me this 14th day of February, 1955, at Elizabeth, N. J.

MOLLIE FREEMAN,
(Mollie Freeman)
A Notary Public of New Jersey.